

2019 No. 1232

EXITING THE EUROPEAN UNION

FINANCIAL SERVICES AND MARKETS

**The Capital Requirements (Amendment) (EU Exit) Regulations
2019**

Approved by both Houses of Parliament

Made - - - - at 9.00 a.m. on 5th September 2019

Laid before Parliament at 3.00 p.m. on 5th September 2019

Coming into force in accordance with regulation 1

The Treasury make these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a), and section 8(1) of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018(b).

The Treasury are a government department designated(c) for the purpose of section 2(2) of the European Communities Act 1972 in relation to financial services.

The Treasury are of the opinion that, by reason of urgency, it is necessary to make these Regulations without a draft of the instrument being laid before, and approved by resolution of, each House of Parliament(d).

(a) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 c.7. By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1993 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183). Paragraph 1A was inserted into Schedule 2 by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51). The European Communities Act 1972 is repealed with effect from exit day by section 1 of the European Union (Withdrawal) Act 2018.

(b) 2018 c. 16.

(c) S.I. 2012/1759.

(d) Paragraph 5(2) of Schedule 7 to the European Union (Withdrawal) Act 2018. Paragraph 38(1) to (3) of Schedule 7 to the European Union (Withdrawal) Act 2018 allows for regulations under that Act to be combined with regulations, made under other enabling provisions, which are subject to the negative resolution procedure in Parliament.

PART 1

Introduction

Citation and commencement

- 1.—(1) These Regulations may be cited as the Capital Requirements (Amendment) (EU Exit) Regulations 2019.
- (2) Parts 1 and 2 come into force on the day after the day on which these Regulations are made.
- (3) Part 3 comes into force on exit day.

Interpretation

2. In these Regulations—

- “the 2008 Regulations” means the Regulated Covered Bonds Regulations 2008(a);
- “the 2013 Regulations” means the Capital Requirements Regulations 2013(b);
- “the 2013 Reporting Regulations” means the Capital Requirements (Country-by-Country Reporting) Regulations 2013(c);
- “the 2014 Regulations” means the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(d);
- “the Capital Requirements Regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;
- “the Exit Regulations” means the Capital Requirements (Amendment) (EU Exit) Regulations 2018(e).

PART 2

Amendment of secondary legislation

CHAPTER 1

Amendment of secondary legislation: European Union (Withdrawal) Act 2018

Amendment of the Exit Regulations

- 3.—(1) The Exit Regulations are amended as follows.
- (2) In regulation 214 (Article 502 to 519 (reports and reviews)) and in the heading to that regulation, for “502 to 519” substitute “501c to 519b”.
- (3) Omit the following provisions—
- (a) regulation 62 (Article 1(scope));
 - (b) regulation 63 (Article 2 (supervisory powers));
 - (c) in regulation 64 (Article 4(1) (definitions))—
 - (i) paragraph (7);
 - (ii) paragraph (20);
 - (iii) paragraph (23);

(a) S.I. 2008/346.
(b) S.I. 2013/3115.
(c) S.I. 2013/3118.
(d) S.I. 2014/894.
(e) S.I. 2018/1401.

- (iv) paragraph (51);
- (d) regulation 73 (Article 13 (application of disclosure requirements on a consolidated basis));
- (e) regulation 74 (Article 14 (application of requirements of Part Five on a consolidated basis));
- (f) regulation 77 (Article 18 (methods for prudential consolidation));
- (g) regulation 82 (Article 26 (Common Equity Tier 1 items));
- (h) regulation 94(2) (Article 78 (supervisory permission for reducing own funds));
- (i) regulation 211 (Article 497 (own funds requirements for exposures to CCPs));
- (j) regulation 221(5) (specific transfer of powers to the Treasury);
- (k) in regulation 222 (European Supervisory Authorities' functions in the Capital Requirements Regulation transferred to both the FCA and PRA), in Table 1—
 - (i) the first row, which addresses Article 18(7) of the Capital Requirements Regulation;
 - (ii) the 22nd row, which addresses Article 124(4) of the Capital Requirements Regulation;
 - (iii) the 54th row, which addresses Article 410(2) of the Capital Requirements Regulation;
 - (iv) the 55th row, which addresses Article 410(3) of the Capital Requirements Regulation;
 - (v) the 56th row, which addresses Article 430(2) of the Capital Requirements Regulation;
- (l) in regulation 223 (European Supervisory Authorities' functions in the Capital Requirements Regulation transferred to only the PRA), in Table 2, the fourth row, which addresses Article 419(5) of the Capital Requirements Regulation.

CHAPTER 2

Amendment of secondary legislation: European Communities Act 1972

Amendment of the 2008 Regulations

4. In regulation 1 of the 2008 Regulations (citation, commencement and interpretation), in paragraph (4), for “Capital Requirements (Amendment) (EU Exit) Regulations 2018” substitute “Capital Requirements (Amendment) (EU Exit) Regulations 2019”.

Amendment of the 2013 Regulations

5. In regulation 2 of the 2013 Regulations (interpretation), in paragraph (3) for “Capital Requirements (Amendment) (EU Exit) Regulations 2018” substitute “Capital Requirements (Amendment) (EU Exit) Regulations 2019”.

Amendment of the 2013 Reporting Regulations

6. In regulation 1 of the 2013 Reporting Regulations (citation, commencement and interpretation), in paragraph (3), for “Capital Requirements (Amendment) (EU Exit) Regulations 2018” substitute “Capital Requirements (Amendment) (EU Exit) Regulations 2019”.

Amendment of the 2014 Regulations

7. In regulation 2 of the 2014 Regulations (interpretation), in paragraph (2A), for “Capital Requirements (Amendment) (EU Exit) Regulations 2018” substitute “Capital Requirements (Amendment) (EU Exit) Regulations 2019”.

PART 3

Amendment of retained direct EU law

Amendments to the Capital Requirements Regulation

8. The Capital Requirements Regulation is amended in accordance with this Part.

Article 1 (scope)

9.—(1) Article 1 (scope) is amended as follows.

(2) In the opening paragraph, for “institutions, financial holding companies and mixed financial holding companies supervised under Directive 2013/36/EU” substitute “CRR firms, financial holding companies set up in the United Kingdom, and mixed financial holding companies set up in the United Kingdom”.

(3) In the sentence following point (e), for “non-EU” substitute “non-UK”.

(4) Omit the final sentence.

Article 2 (supervisory powers)

10.—(1) Article 2 (supervisory powers) is amended as follows.

(2) For “resolution authorities” in both places it occurs substitute “the resolution authority”.

(3) In paragraph 1, for “Directive 2013/36/EU” substitute “Directive 2013/36/EU UK law”.

(4) In paragraph 2, for “Directive 2014/59/EU of the European Parliament and of the Council” substitute “the United Kingdom legislation that implemented Directive 2014/59/EU, as amended from time to time,”.

(5) Omit paragraph 4.

Article 4 (definitions)

11.—(1) Article 4 (definitions) is amended as follows.

(2) In paragraph 1—

(a) in point (7), for “Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council or an alternative investment fund (AIF) as defined in point (a) of Article 4(1) of Directive 2011/61/EU of the European Parliament and of the Council” substitute “section 236A of FSMA(a), or a UK AIF, an EEA AIF, a Gibraltar AIF, or a third country AIF within the meaning of regulation 2(1) of the Alternative Investment Fund Managers Regulations 2013(b)”;

(b) in point (26)—

(i) after “one or more of the” insert “Annex 1”;

(ii) omit “of Annex I to Directive 2013/36/EU”;

(iii) for “a payment institution as defined in point (4) of Article 4 of Directive (EU) 2015/2366 of the European Parliament and of the Council” substitute “an authorised payment institution within the meaning of regulation 2(1) of the Payment Services Regulations 2017(c)”;

(iv) for “, respectively, in points (f) and (g) of Article 212(1) of Directive 2009/138/EC” substitute “in the PRA rulebook”;

(c) for point (28) substitute—

(a) Section 236A was inserted by S.I. 2019/325.

(b) S.I. 2013/1773, as amended by S.I. 2019/328.

(c) S.I. 2017/752, as amended by S.I. 2018/1201.

“‘UK parent institution’ means an institution in the United Kingdom which has an institution, a financial institution or an ancillary services undertaking as a subsidiary or which holds a participation in an institution, financial institution or ancillary services undertaking, and which is not itself a subsidiary of another institution authorised in the United Kingdom, or of a financial holding company or mixed financial holding company set up in the United Kingdom;”;

(d) for point (29a) substitute—

“‘UK parent investment firm’ means a UK parent institution that is an investment firm within the meaning of point (2) of this paragraph;”;

(e) omit point (29b);

(f) for point (29c) substitute—

“‘UK parent credit institution’ means a UK parent institution that is a credit institution within the meaning of point (1) of this paragraph;”;

(g) omit point (29d);

(h) in point (72), in point (a), for “the procedure set out in point (a) of Article 25(4) of Directive 2014/65/EU of the European Parliament and of the Council” substitute “paragraph 8 of Schedule 3 to Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012(a)”;

(i) in point (128)—

(i) omit “Union or” in each place it occurs;

(ii) for “national law” in each place it occurs substitute “the law of the United Kingdom, or any part of it, or of a third country”;

(j) for point (130) substitute—

“‘resolution authority’ means the Bank;”;

(k) after point (130) insert—

“(130A) ‘resolution’ means the application of a stabilisation option referred to in section 1(3) of the Banking Act 2009(b) in order to achieve one or more of the objectives referred to in section 4 of that Act;”;

(l) for point (131) substitute—

“‘resolution entity’ means either—

(a) a legal person established in the United Kingdom which is identified by the resolution authority as an entity in respect of which the resolution plan drawn up in accordance with article 40 of the second BRRD Order provides for resolution action; or

(b) an institution that is not part of a group that is subject to consolidated supervision under Part 6 of the Capital Requirements Regulations 2013(c), in respect of which the resolution plan drawn up in accordance with article 37 of the second BRRD Order provides for resolution action;”;

(m) for point (132) substitute—

“‘resolution group’ means a resolution entity and its subsidiaries that are not—

(a) resolution entities themselves;

(b) subsidiaries of other resolution entities; or

(c) entities established in a third country that are not included in the resolution group in accordance with the resolution plan and their subsidiaries;”;

(a) Schedule 3 was inserted by regulation 37 of S.I. 2018/1403.

(b) 2009 c. 1. So far as is relevant for the purposes of these Regulations, this Act was amended by S.I. (2014/3329).

(c) S.I. 2013/3115, as amended by these Regulations.

- (n) after point (132) insert—
- “(132A) ‘resolution action’ means—
- (a) the decision to place an institution or entity under resolution pursuant to sections 7, 81B, 81BA, 81ZBA, 81C, 81D, or 82 of the Banking Act 2009;
 - (b) the application of a stabilisation option referred to in section 1(3) of the Banking Act 2009; or
 - (c) the exercise of one or more powers conferred on the Bank by United Kingdom legislation which implemented Articles 63 to 72 of Directive 2014/59/EU;”;
- (o) in point (133), for “Article 131(1) and (2) of Directive 2013/36/EU” substitute “Part 4 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(a)”;
- (p) in point (134) for “non-EU” in both defined terms substitute “non-UK”;
- (q) in point (135), omit the words from “for the purpose” to the end;
- (r) in point (136), for “non-EU” substitute “non-UK”;
- (s) for point (137) substitute—
- “‘bail-in tool’ means the mechanism for effecting the exercise by the resolution authority of the write-down and conversion powers in relation to liabilities of an institution under resolution, in accordance with section 12A of the Banking Act 2009;”;
- (t) in point (138), for the words from “that are related to each other” to the end substitute “that are related to each other pursuant to a common management relationship within the meaning of point (38A)”;
- (u) in point (145)—
- (i) in point (b)—
 - (aa) omit “and Directive 2013/36/EU”;
 - (bb) omit the words “Member States may lower that threshold;”;
 - (ii) in point (c) for “Article 4 of Directive 2014/59/EU” substitute “articles 7 and 8 of the second BRRD Order”;
 - (iii) in point (f) for “European Economic Area” substitute “United Kingdom”;
- (v) in point (146)—
- (i) in point (b) for “Article 131(1) and (3) of Directive 2013/36/EU” substitute “Part 6 of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(b)”;
 - (ii) in point (c)—
 - (aa) omit “, in the Member State in which it is established,”;
 - (bb) after “institutions” insert “in the United Kingdom”;
 - (iii) in point (d) omit “and Directive 2013/36/EU”;
- (w) in point (148) omit the words from “of any Member State” to the end;
- (x) in point (149) for “Articles 4 and 5 of Directive 2004/109/EC of the European Parliament and of the Council” substitute “sections 4.1 (Annual financial report) and 4.2 (Half-yearly financial reports) of chapter 4 (Periodic Financial Reporting) of the FCA’s Disclosure Guidance and Transparency Rules sourcebook”.

(a) S.I. 2014/894.

(b) S.I. 2014/894, as amended by these Regulations.

- (3) In paragraph 1A(a), after the definition of “Regulated Activities Order”, insert—
 ““the second BRRD Order” means the Bank Recovery and Resolution (No. 2) Order 2014(b);”.
- (4) In paragraph 4—
- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
 - (b) omit the words from “EBA shall submit” to the end.

Article 4A (definitions: regulators’ rules)

12. In Article 4A (definitions: regulators’ rules)(c), in paragraph 1 for “these Regulations” substitute “this Regulation”.

Article 6 (general principles)

- 13.—(1) Article 6 (general principles) is amended as follows.
- (2) In paragraph 1a—
- (a) in the second sentence for “non-EU” substitute “non-UK”;
 - (b) in point (c) for “an EU parent institution” substitute “a UK parent institution”.

Article 11 (general treatment)

- 14.—(1) Article 11 (general treatment) is amended as follows.
- (2) In paragraph 3a—
- (a) for “non-EU G-SII” in both places it occurs substitute “non-UK G-SII”;
 - (b) for “EU parent undertakings” substitute “UK parent undertakings”;
 - (c) omit the words from “Where Article 21b(2)” to the end.

Article 12a (consolidated calculation for G-SIIs with multiple resolution entities)

- 15.—(1) Article 12a (consolidated calculation for G-SIIs with multiple resolution entities) is amended as follows.
- (2) In the first paragraph, for “EU parent institution” in both places it occurs substitute “UK parent institution”.
- (3) Omit the second and third paragraphs.

Article 13 (application of disclosure requirements on a consolidated basis)

- 16.—(1) Article 13 (application of disclosure requirements on a consolidated basis) is amended as follows.
- (2) For “EU parent institutions” in each place it occurs substitute “UK parent institutions”.
- (3) In paragraph 1, for “Directive 2013/36/EU” substitute “Directive 2013/36/EU UK law”.
- (4) In paragraph 3—
- (a) for “EU parent financial holding companies” substitute “UK parent financial holding companies”;
 - (b) for “EU parent mixed financial holding companies” substitute “UK parent mixed financial holding companies”.

(a) As inserted by regulation 64(53) of S.I. 2018/1401.
(b) S.I. 2014/3348, as amended by S.I. 2018/1394.
(c) As inserted by S.I. 2018/1401.

(5) Omit paragraph 4.

Article 18 (methods of prudential consolidation)

17.—(1) Article 18 (methods of prudential consolidation) is amended as follows.

(2) In paragraph 9—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 26 (Common Equity Tier 1 items)

18.—(1) Article 26 (Common Equity Tier 1 items) is amended as follows.

(2) In paragraph 3—

- (a) omit the subparagraph beginning “Competent authorities shall consult EBA”;
- (b) for “On the basis of information collected from competent authorities, EBA” substitute “Each competent authority”;
- (c) omit the words “in each Member State”;
- (d) omit the words from “In accordance with Article 35” to the end.

Article 28 (Common Equity Tier 1 instruments)

19. In Article 28 (Common Equity Tier 1 instruments), in point (b) of paragraph 3, for “same Member State” substitute “United Kingdom”.

Article 36 (deductions from Common Equity Tier 1 items)

20.—(1) Article 36 (deductions from Common Equity Tier 1 items) is amended as follows.

(2) In paragraph 4—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 47c (deduction for non-performing exposures)

21.—(1) Article 47c (deduction for non-performing exposures) is amended as follows.

(2) In paragraph 5—

- (a) for “EBA” substitute “The PRA and the FCA”;
- (b) omit the final sentence.

Article 52 (additional Tier 1 instruments)

22.—(1) Article 52 (additional Tier 1 instruments) is amended as follows.

(2) In point (p) of paragraph 1—

- (a) for “in accordance with Article 12 of Directive 2014/59/EU” in both places it occurs substitute “by the Bank”;
- (b) for “Union” in both places it occurs substitute “United Kingdom”;
- (c) for “in a Member State” substitute “in the United Kingdom”;
- (d) for “Article 59 of that Directive” substitute “section 6B of the Banking Act 2009”.

(3) In point (q) of paragraph 1—

- (a) for “in accordance with Article 12 of Directive 2014/59/EU” substitute “by the Bank”;
- (b) for “Union” substitute “United Kingdom”;

- (c) for “in a Member State” substitute “in the United Kingdom”;
- (d) for “Article 59 of that Directive” substitute “section 6B of the Banking Act 2009”.

Article 54 (write down or conversion of Additional Tier 1 instruments)

23. In Article 54 (write down or conversion of Additional Tier 1 instruments), in point (e) of paragraph 1, omit “, after consulting EBA,”.

Article 63 (Tier 2 instruments)

24.—(1) Article 63 (Tier 2 instruments) is amended as follows.

(2) In point (n)—

- (a) for “in accordance with Article 12 of Directive 2014/59/EU” in both places it occurs substitute “by the Bank”;
- (b) for “Article 59 of that Directive” substitute “section 6B of the Banking Act 2009”.

(3) In point (o)—

- (a) for “in accordance with Article 12 of Directive 2014/59/EU” substitute “by the Bank”;
- (b) for “Article 59 of that Directive” substitute “section 6B of the Banking Act 2009”.

Article 72a (eligible liabilities items)

25.—(1) Article 72a (eligible liabilities items) is amended as follows.

(2) In paragraph 2—

- (a) in point (c), for “in Article 6 of Directive 2014/49/EU of the European Parliament and of the Council” substitute “regulation 7A(3) of the Deposit Guarantee Scheme Regulations 2015(a)”;
- (b) in point (d) for “Union” in each place it occurs substitute “United Kingdom”;
- (c) in point (e) for “national law” substitute “the law of the United Kingdom or any part of it”;
- (d) in point (i)—
 - (i) in paragraph (i) for “Directive 98/26/EC of the European Parliament and of the Council” substitute “regulation 4 of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(b)”;
 - (ii) for paragraph (ii) substitute—
 - “(i) participants, as defined in regulation 2(1) of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999(c), in a system designated in accordance with Regulation 4 of those Regulations and arising from the participation in such a system; or”;
- (e) in point (j)—
 - (i) in paragraph (i) for “as referred to in Article 92(2) of Directive 2013/36/EU” substitute “within the meaning of Rule 3 of Part 152 (remuneration) of the PRA rulebook (other than persons deemed by virtue of rule 3.2 not to be material risk takers and notified to the PRA in accordance with rule 3.3)”;
 - (ii) in paragraph (iv) for “contributions due in accordance with Directive 2014/49/EU” substitute “levies imposed by the scheme manager under section 213(3)(b) or (4) of FSMA”.

(a) S.I. 2015/486, as amended by S.I. 2018/1285.
 (b) S.I. 1999/2979, as amended by S.I. 2019/341.
 (c) S.I. 1999/2979, as amended by S.I. 2019/341.

Article 72b (eligible liabilities instruments)

26.—(1) Article 72b (eligible liabilities instruments) is amended as follows.

(2) In paragraph 2—

(a) in point (d)—

(i) in paragraph (i) for “as defined in point (47) of Article 2(1) of Directive 2014/59/EU” substitute “as defined in section 3(1) of the Banking Act 2009”;

(ii) in paragraph (ii) for “as defined in point (47) of Article 2(1) of Directive 2014/59/EU” substitute “as defined in section 3(1) of the Banking Act 2009”;

(b) in point (n) for “Article 48 of Directive 2014/59/EU” substitute “section 12AA of the Banking Act 2009”;

(c) in the final sentence, for “national insolvency law” substitute “the insolvency law of the United Kingdom or any part of it”.

(3) In paragraph 3—

(a) in point (b) for “national insolvency law” substitute “the insolvency law of the United Kingdom”;

(b) in point (c) after “the principles referred to in” insert “United Kingdom legislation which immediately before exit day gave effect to”.

(4) In paragraph 4—

(a) in point (c) for “national insolvency law” substitute “the insolvency law of the United Kingdom”;

(b) in point (e) after “the principles referred to in” insert “United Kingdom legislation which immediately before exit day gave effect to”.

(5) In paragraph 7—

(a) for “EBA shall develop” substitute “The Bank may make”;

(b) omit “draft regulatory” in both places it occurs;

(c) for “delegated act” substitute “technical standards”;

(d) omit the words from “EBA shall submit” to the end.

Article 72e (deductions from eligible liabilities items)

27.—(1) Article 72e (deductions from eligible liabilities items) is amended as follows.

(2) In paragraph 4—

(a) for “an EU parent institution or a parent institution in a Member State” substitute “a UK parent institution or a parent institution in the United Kingdom”;

(b) for “of that parent institution, after duly considering the opinion of the resolution authorities of any subsidiaries concerned” substitute “after duly considering the opinion of a relevant foreign resolution authority within the meaning of section 83ZE(10) of the Banking Act 2009”;

(c) in the definition of “r_i” omit “and Article 45d of Directive 2014/59/EU”.

Article 78 (supervisory permission to reduce own funds)

28.—(1) Article 78 (supervisory permission to reduce own funds) is amended as follows.

(2) For “Directives 2013/36/EU and 2014/59/EU” in each place it occurs substitute “Directive 2013/36/EU UK law and in the United Kingdom legislation that implemented Directive 2014/59/EU as amended from time to time”.

(3) In paragraph 1, in the sentence following point (b), for “Directive 2013/36/EU” substitute “Directive 2013/36/EU UK law”.

(4) In paragraph 5—

- (a) for “EBA shall develop draft” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 78a (permission to reduce eligible liabilities instruments)

29.—(1) Article 78a (permission to reduce eligible liabilities instruments) is amended as follows.

(2) For “resolution authorities” in both places it occurs substitute “the resolution authority”.

(3) For “Directives 2013/36/EU and 2014/59/EU” in each place it occurs substitute “Directive 2013/36/EU UK law and in the United Kingdom legislation that implemented Directive 2014/59/EU as amended from time to time”.

(4) In point (c) of paragraph 1, for “Directive 2013/36/EU” substitute “Directive 2013/36/EU UK law”.

(5) In paragraph 3—

- (a) for “EBA shall develop draft regulatory” substitute “The Bank may make”;
- (b) in the sentence following point (d)—
 - (i) omit the words “draft regulatory”;
 - (ii) for “delegated act” substitute “technical standards”;
- (c) omit the words from “EBA shall submit” to the end.

Article 81 (minority interests that qualify for inclusion in consolidated Common Equity Tier 1 capital)

30. In Article 81 (minority interests that qualify for inclusion in consolidated Common Equity Tier 1 capital), in point (a)(iii) of paragraph 1—

- (a) for “Commission has” substitute “Treasury have”;
- (b) for “decided” substitute “determined”.

Article 82 (qualifying Additional Tier 1, Tier 1, Tier 2 capital and qualifying own funds)

31. In Article 82 (qualifying Additional Tier 1, Tier 1, Tier 2 capital and qualifying own funds), in paragraph (iii) of point (a)—

- (a) for “Commission has” substitute “Treasury have”;
- (b) for “decided” substitute “determined”.

Article 92a (requirements for own funds and eligible liabilities for G-SIIs)

32.—(1) Article 92a (requirements for own funds and eligible liabilities for G-SIIs) is amended as follows.

(2) In paragraph 2—

- (a) in point (b) for “Directive 2014/59/EU” substitute “section 48B of the Banking Act 2009”;
- (b) in point (c) omit the words “referred to in point (b) of Article 32(1) of Directive 2014/59/EU”.

(3) Omit paragraph 3.

Article 92b (requirement for own funds and eligible liabilities for non-EU G-SIIs)

33.—(1) Article 92b (requirement for own funds and eligible liabilities for non-EU G-SIIs) is amended as follows.

(2) In the heading, for “non-EU” substitute “non-UK”.

- (3) For “non-EU” in each place it occurs substitute “non-UK”.
- (4) In paragraph 2 for “in a Member State” substitute “in the United Kingdom”.
- (5) In paragraph 3—
 - (a) in point (a) for “as defined in point (47) of Article 2(1) of Directive 2014/59/EU” substitute “as defined in section 3(1) of the Banking Act 2009”;
 - (b) in point (b) for “in accordance with Articles 59 to 62 of Directive 2014/59/EU” substitute “under sections 6A or 81AA of the Banking Act 2009”.

Article 117 (exposures to multilateral development banks)

34. In Article 117 (exposures to multilateral development banks), in paragraph 2, for the words from “The Commission is empowered” to the end substitute “The Treasury may by regulations, in accordance with international standards, amend the list of multilateral development banks referred to in the first subparagraph”.

Article 118 (exposures to international organisations)

35. In Article 118 (exposures to international organisations), in point (a), omit “and the European Atomic Energy Community”.

Article 124 (exposures secured by mortgages on immovable property)

36.—(1) Article 124 (exposures secured by mortgages on immovable property) is amended as follows.

- (2) In paragraph 4—
 - (a) for “EBA, in close cooperation with the ESRB, shall develop draft regulatory” substitute “The FCA and PRA may each make”;
 - (b) omit the words from “EBA shall submit” to the end.

Article 132a (approaches for calculating risk-weighted exposure amounts of CIUs)

37.—(1) Article 132a (approaches for calculating risk-weighted exposure amounts of CIUs) is amended as follows.

- (2) In paragraph 4—
 - (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
 - (b) omit the words from “EBA shall submit” to the end.

Article 164 (loss given default (LGD))

38.—(1) Article 164 (loss given default (LGD)) is amended as follows.

- (2) In paragraph 8—
 - (a) for “EBA, in close cooperation with the ESRB, shall develop draft regulatory” substitute “The FCA and PRA may each make”;
 - (b) omit the words from “EBA shall submit” to the end.
- (3) Omit paragraph 9.

Article 277 (transactions with a linear risk profile)

39.—(1) Article 277 (transactions with a linear risk profile) is amended as follows.

- (2) In paragraph 5—
 - (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
 - (b) omit the words from “EBA shall submit” to the end.

Article 279a (supervisory delta)

40.—(1) Article 279a (supervisory delta) is amended as follows.

(2) In paragraph 3—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 325 (approaches for calculating the own funds requirements for market risk)

41.—(1) Article 325 (approaches for calculating the own funds requirements for market risk) is amended as follows.

(2) In paragraph 9—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 325g (own funds requirements for curvature risk)

42. In Article 325g (own funds requirements for curvature risk) for “delegated act” substitute “regulations”.

Article 325h (aggregation of risk-class specific own funds requirements for delta, vega and curvature risks)

43. In Article 325h (aggregation of risk-class specific own funds requirements for delta, vega and curvature risks), in point (c) of paragraph 2, for “delegated act” substitute “regulations”.

Article 325i (treatment of index instruments and multi-underlying options)

44. In Article 325i (treatment of index instruments and multi-underlying options) for “delegated act” substitute “regulations”.

Article 325j (treatment of collective investment undertakings)

45. In Article 325j (treatment of collective investment undertakings) for “delegated act” substitute “regulations”.

Article 325u (own funds requirements for residual risks)

46.—(1) Article 325u (own funds requirements for residual risks) is amended as follows.

(2) In paragraph 5—

- (a) in the opening sentence, for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) in the second sentence—
 - (i) omit the words “draft regulatory”;
 - (ii) for “EBA” substitute “the FCA and PRA”.
- (c) omit the words from “EBA shall submit” to the end.

Article 325w (gross jump-to-default amounts)

47.—(1) Article 325w (gross jump-to-default amounts) is amended as follows.

(2) In paragraph 8—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 325ae (risk weights for general interest rate risk)

48. In Article 325ae (risk weights for general interest rate risk) for “delegated act” substitute “regulations” in both places it occurs.

Article 325ag (correlations across buckets for general interest rate risk)

49. In Article 325ag (correlations across buckets for general interest rate risk) omit paragraph 2.

Article 325ah (risk weights for credit spread risk for non-securitisations)

50. In Article 325ah (risk weights for credit spread risk for non-securitisations) in Table 4, in the entry concerning bucket 1, for “Central government, including central banks, of a Member State” substitute “The central government of the United Kingdom, and the Bank”.

Article 325ak (risk weights for credit spread risk for securitisations included in the ACTP)

51. In Article 325ak (risk weights for credit spread risk for securitisations included in the ACTP), in table 6—

- (a) in the entry concerning bucket 1, for “Central government, including central banks, of Member States” substitute “The central government of the United Kingdom, and the Bank”;
- (b) in the entry concerning bucket 9, for “Member States” substitute “the United Kingdom”.

Article 325ap (risk weights for equity risk)

52.—(1) Article 325ap (risk weights for equity risk) is amended as follows.

(2) In paragraph 3—

- (a) for “EBA shall develop draft regulatory” substitute “the FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 325as (risk weights for commodity risk)

53. In Article 325as (risk weights for commodity risk) for “delegated act” substitute “regulations”.

Article 325av (risk weights for foreign exchange risk)

54. In Article 325av (risk weights for foreign exchange risk) for “delegated act” substitute “regulations”.

Article 325az (alternative internal model approach and permission to use alternative internal models)

55.—(1) Article 325az (alternative internal model approach and permission to use alternative internal models) is amended as follows.

(2) In paragraph 5 omit the final sentence.

(3) In paragraph 8—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

(4) In paragraph 9—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) for “competent authorities” substitute “they”;

- (c) omit the words from “EBA shall submit” to the end.

Article 325bc (partial expected shortfall calculations)

56. In Article 325bc (partial expected shortfall calculations), in point (c) of paragraph 4, omit the words from “competent authorities shall notify” to the end.

Article 325bd (liquidity horizons)

57.—(1) Article 325bd (liquidity horizons) is amended as follows.

(2) Omit paragraph 5.

(3) In paragraph 7—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

(4) In Table 2—

- (a) in the fifth row, for “Central government, including central banks, of Member States” substitute “The central government of the United Kingdom, and the Bank”;
- (b) in the sixth row, for “Covered bonds issued by credit institutions in Member States (Investment Grade)” substitute “Covered bonds issued by credit institutions in the United Kingdom (Investment Grade)”.

Article 325be (assessment of the modellability of risk factors)

58.—(1) Article 325be (assessment of the modellability of risk factors) is amended as follows.

(2) In paragraph 3—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 325bf (regulatory back-testing requirements and multiplication factors)

59.—(1) Article 325bf (regulatory back-testing requirements and multiplication factors) is amended as follows.

(2) In paragraph 9—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 325bg (profit and loss attribution requirement)

60.—(1) Article 325bg (profit and loss attribution requirement) is amended as follows.

(2) In paragraph 4—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 325bh (requirements on risk measurement)

61. In Article 325bh (requirements on risk measurement) omit paragraph 3.

Article 325bk (calculation of stress scenario risk measure)

62.—(1) Article 325bk (calculation of stress scenario risk measure) is amended as follows.

(2) In paragraph 3—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) in the sentence following point (d)—
 - (i) omit the words “draft regulatory”;
 - (ii) for “EBA” substitute “the FCA and PRA”;
- (c) omit the words from “EBA shall submit” to the end.

Article 325bp (particular requirements for an internal default risk model)

63.—(1) Article 325bp (particular requirements for an internal default risk model) is amended as follows.

(2) In paragraph 12—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 390 (calculation of the exposure value)

64.—(1) Article 390 (calculation of the exposure value) is amended as follows.

(2) In paragraph 9—

- (a) for “EBA shall develop draft regulatory” substitute “the FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 391 (definition of an institution for large exposures purposes)

65.—(1) Article 391 (definition of an institution for large exposures purposes) is amended as follows.

(2) For the words from “Commission may adopt” to “decisions as to” substitute “Treasury may by regulations determine”.

(3) In the closing sentence, for “Union” substitute “United Kingdom”.

Article 394 (reporting requirements)

66.—(1) Article 394 (reporting requirements) is amended as follows.

(2) In paragraph 4—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) in the second sentence—
 - (i) omit “draft regulatory”;
 - (ii) for “EBA” substitute “the PRA and FCA”;
- (c) in point (b) for “Directive 2013/36/EU” substitute “Directive 2013/36/EU UK law”;
- (d) omit the words from “EBA shall submit” to the end.

Article 396 (compliance with large exposures requirements)

67. In Article 396 (compliance with large exposures requirements), omit paragraph 3.

Article 403 (substitution approach)

68. In Article 403 (substitution approach), omit paragraph 4.

Article 415 (reporting obligation and reporting format)

69.—(1) Article 415 (reporting obligation and reporting format) is amended as follows.

(2) In paragraph 3a—

- (a) for “EBA shall develop draft implementing” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 419 (currencies with constraints on the availability of liquid assets)

70.—(1) Article 419 (currencies with constraints on the availability of liquid assets) is amended as follows.

(2) In paragraph 5—

- (a) for “EBA shall develop draft regulatory” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 430 (reporting on prudential requirements and financial information)

71.—(1) Article 430 (reporting on prudential requirements and financial information) is amended as follows.

(2) Omit paragraph 2.

(3) In paragraph 7—

- (a) in the opening sentence, for “EBA shall develop draft implementing” substitute “The FCA and PRA may each make”;
- (b) omit the second sentence;
- (c) in the third sentence—
 - (i) omit the words “draft implementing”;
 - (ii) for “EBA” substitute “the FCA and PRA”;
- (d) omit the words from “EBA shall submit” to the end.

(4) Omit paragraph 8.

Article 430b (specific reporting requirements for market risk)

72.—(1) Article 430b (specific reporting requirements for market risk) is amended as follows.

(2) In paragraph 1 for “delegated act” substitute “regulations”.

(3) In paragraph 3, omit “regulatory”.

(4) In paragraph 6—

- (a) for “EBA shall develop draft implementing” substitute “The FCA and PRA may each make”;
- (b) omit the words from “EBA shall submit” to the end.

Article 430c (feasibility report on the integrated reporting system)

73. Omit Article 430c (feasibility report on the integrated reporting system).

Article 434a (uniform disclosure formats)

74. In Article 434a (uniform disclosure formats)—

- (a) for “EBA shall develop draft implementing” substitute “The FCA and PRA may each make”;
- (b) in the second paragraph omit “implementing”;
- (c) omit the words from “EBA shall submit” to the end.

Article 460 (liquidity)

75.—(1) Article 460 (liquidity) is amended as follows.

(2) In paragraph 1—

- (a) for “Commission is empowered to supplement this Regulation by adopting delegated acts in accordance with Article 462 to” substitute “Treasury may by regulations”;
- (b) for “Delegated acts adopted in accordance with this paragraph” substitute “Such regulations”;
- (c) for “Commission is empowered to supplement this Regulation by adopting delegated acts specifying” substitute “Treasury may by regulations specify”.

(3) In paragraph 3—

- (a) for “Commission is empowered to” substitute “Treasury may by regulations”;
- (b) omit “adopting delegated acts in accordance with Article 462”;
- (c) omit the words from “The Commission shall” to the end.

Article 461a (alternative standardised approach for market risk)

76.—(1) Article 461a (alternative standardised approach for market risk) is amended as follows.

(2) For “Commission is empowered to adopt delegated acts in accordance with Article 462, to amend this Regulation by making” substitute “Treasury may by regulations make”.

(3) Omit the closing sentence.

Article 497 (own funds requirements for exposures to CCPs)

77.—(1) Article 497 (own funds requirements for exposures to CCPs) is amended as follows.

(2) In paragraph 1—

- (a) in the opening sentence, for “ESMA” substitute “the Bank”;
- (b) in point (a), for “Commission has already adopted an implementing act referred to in” substitute “Treasury have made regulations under”;
- (c) in point (b)—
 - (i) for “Commission has not yet adopted an implementing act referred to in” substitute “Treasury have not yet made regulations under”;
 - (ii) in paragraph (i) for “implementing act” substitute “regulations”.

(3) In paragraph 3, for “Commission may adopt, by way of implementing acts, and subject to the examination procedure referred to in Article 464(2), a decision to” substitute “Treasury may by regulations”.

Article 500 (adjustment for massive disposals)

78. In Article 500 (adjustment for massive disposals), for “competent authority” in both places it occurs substitute “PRA”.

Article 501a (adjustment to own funds requirements for credit risk for exposures to entities that operate or finance physical structures or facilities, systems and networks that provide or support essential public services)

79. Omit Article 501a (adjustment to own funds requirements for credit risk for exposures to entities that operate or finance physical structures or facilities, systems and networks that provide or support essential public services).

Article 501b (derogation from reporting requirements)

80. In Article 501b (derogation from reporting requirements) omit the word “implementing” in both places it occurs.

Article 519c (compliance tool)

81. Omit Article 519c (compliance tool).

*Mike Freer
Rebecca Harris*

At 9.00 a.m. on 5th September 2019 Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend retained EU law governing the amount of capital that banks and other financial institutions are required to hold. In addition, these Regulations make consequential amendments to the Capital Requirements (Amendment) (EU Exit) Regulations 2018 (S.I. 2018/1401). The amendments made by these Regulations address changes made to EU law between 29 March 2019 and 31 October 2019.

Save for Chapter 2 in Part 2, these Regulations are made in exercise of the powers in section 8(1) of and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union (and in particular, the deficiencies under paragraphs (b), (c), (e), (f) and (g) of section 8(2) of that Act). Chapter 2 in Part 2 is made in exercise of the powers in section 2(2) of the European Communities Act 1972 (c. 68).

These Regulations refer to the Rulebook made by the Prudential Regulation Authority under the Financial Services and Markets Act 2000 (c.8), and sourcebooks made by the Financial Conduct Authority under that Act. The Rulebook is available on <http://www.prarulebook.co.uk> and copies of the rules referred to can be obtained from the Prudential Regulation Authority, 20 Moorgate, London EC2R 6DA, where the Rulebook is also available for inspection. Sourcebooks made by the Financial Conduct Authority are available on <https://www.handbook.fca.org.uk/handbook> and copies of the rules referred to can be obtained from the Financial Conduct Authority, 12 Endeavour Square, London E20 1JN, where they are also available for inspection.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

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